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scribed in the declaration is included in the block claimed, and whether defendants showed adverse possession under color of title to the land claimed by them within the interlock since the senior title of plaintiff accrued, were questions for the jury, and, having been fairly submitted to the jury, the findings on conflicting evidence approved by the trial court will not be reviewed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Trial (§ 232 (1)*)—Instructions—Sufficiency as Whole.—Where the instructions as a whole fully and correctly propounded the law upon every material question in the case, more cannot be required of a trial court.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714.]

Error to Circuit Court, Russell County.

Action by J. W. Gent against W. H. Sutherland and others. Judgment for plaintiff after remand for a new trial, and defendants bring error. Affirmed.

W. W. Bird and T. L. Sutherland, both of Lebanon, and *S. H. & G. C. Sutherland*, of Clintwood, for plaintiff in error.

Finney & Wilson, of Lebanon, for defendant in error.

PINE et al. v. COMMONWEALTH.

Sept. 20, 1917.

[93 S. E. 652.]

1. Indictment and Information (§ 144*)—Constitutionality of Statute.—Exceptions.—Since every indictment is based on the existence of a valid law, stating the penalty for the offense, the court must, at any time when the alleged unconstitutionality of the act is brought to its attention, dismiss the prosecution if the act is in fact unconstitutional.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 453.]

2. Constitutional Law (§ 12*)—Construction—Maxims.—The principle, "Expressio unius est exclusio alterius," even in the interpretation of provisions of Constitution, relating to the legislative department, should be applied with great caution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 149.]

3. Constitutional Law (§§ 26, 48*)—Construction—Presumptions.—In determining whether a legislative act is unconstitutional, it must be remembered that the Constitution is a restriction, and not a grant, of power, and that the Legislature is omnipotent in legislation unless restrained by the Constitution, and that every act is presumed to be

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constitutional until the contrary appears; all doubts being resolved in favor of validity.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 161, 163.]

4. Constitutional Law (§ 50*)—Division of Powers—Legislature.—When the Constitution has fully dealt with a subject and covered the entire ground, the Legislature is powerless to make any change therein.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 161, 162.]

5. Constitutional Law (§ 14*)—Construction—Specific Words.—The presumption is that the same meaning attaches to a given word or phrase which is repeated in a Constitution, unless the contrary is made to appear, and hence the whole instrument should be examined to ascertain what that meaning is.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 149.]

6. Intoxicating Liquors (§ 6*)—Local Option—Construction.—Const. 1902, § 62, providing that the General Assembly shall have full power to enact local option laws, gives no new power to the Legislature, but is simply declaratory of the existing law, although it places no restriction whatever upon the legislative power.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 5.]

7. Constitutional Law (§ 70 (3)*)—Construction—Judicial Opinions.—Judicial opinions of expediency can not be substituted for the will of the Legislature when constitutionally expressed.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 183.]

8. Intoxicating Liquors (§ 17*)—Local Option Laws—Validity.—Acts 1916, c. 146, commonly known as the prohibition act, does not violate Const. 1902, § 62, giving the Legislature full power to provide local option legislation.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 6.]

9. Constitutional Law (§ 106*)—Vested Rights—Procedure.—The power of the Legislature to change rules of procedure is unquestionable, except as restrained by Constitution, and it may provide that what has theretofore required several counts in an indictment may be accomplished by a single count if the accused is not prejudiced thereby.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 212.]

10. Indictment and Information (§ 125 (1)*)—Intoxicating Liquors—Requisites and Sufficiency—Illegal Sale.—Acts 1916, c. 146, § 7, providing the form of an indictment for violation of the prohibition law and permitting a number of offenses against the law to be charged in one count, is valid.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 23, 27.]

11. Indictment and Information (§ 56*)—Requisites and Sufficiency.—In all cases, civil as well as criminal, a person haled into court has

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the right to demand that he be told in plain, intelligible language what is the cause of the complaint against him; and this right, in so far as it relates to crimes, is guaranteed by both Const. U. S. Amend. 6, and Const. 1902, § 8.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 403.]

12. Indictment and Information (§ 63*)—Sufficiency—Stating Facts.—Prohibition Law (Acts 1916, c. 146) § 3, makes it an offense to transport for sale ardent spirits, or to advertise for sale or to aid in procuring ardent spirits. By section 4 it is made an offense to act as agent or employee in certain instances. In none of these sections are the facts constituting these separate offenses set forth. Held, that an indictment failing to set forth the acts done constituting these offenses is insufficient.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 26, 27.]

13. Indictment and Information (§ 2 (1)*)—Requisites and Sufficiency.—While the Constitution guarantees to every man the right to demand the cause and nature of his accusation, it does not prescribe the manner in which the demand shall be complied with or require that it be by indictment, and it may be by presentment or information or any other manner the Legislature may provide.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 387.]

14. Indictment and Information (§ 5*)—Requisites and Sufficiency.—The constitutional right of one accused to demand the cause and nature of his accusation is subject to waiver by the accused, and unless he asserts such right, he will be held to have waived it.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 387.]

15. Indictment and Information (§ 121 (2)*)—Bill of Particulars—Right to Demand.—When the charge in the indictment is too general and indefinite to apprise the defendant of the cause and nature of his accusation without the aid of a bill of particulars, it is error for the trial court to refuse to require such bill.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 377; 7 Va.-W. Va. Enc. Dig. 403, 451.]

16. Indictment and Information (§ 132 (2)*)—Election Between Counts.—Except under an indictment for violation of the prohibition law, there can not be more offenses than there are counts in the indictment, and if the commonwealth offers evidence of more than one, the proper practice is for the defendant to ask the court to require the commonwealth to elect.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 445; 8 Va.-W. Va. Enc. Dig. 30.]

17. Indictment and Information (§ 121 (1)*)—Election Between Counts.—While Code 1904, § 3249, confers the right to demand a bill

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of particulars in any civil action, it does not apply to criminal prosecutions, but the right is inherent in the trial court.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 377; 7 Va.-W. Va. Enc. Dig. 403, 451.]

18. Indictment and Information (§ 121 (5)*)—Requisites and Sufficiency.—The indictment, of course, must charge the offense, and if it fails to give the information necessary to enable the defendant to concert his defense, such information may be supplied by a bill of particulars; but if the offense is not charged in the indictment, the defect cannot be supplied by a bill of particulars, since a bill of particulars may supply the fault of generality or uncertainty, but not the omission of an essential averment of the indictment.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 377; 7 Va.-W. Va. Enc. Dig. 403.]

19. Criminal Law (§ 1180 (1)*)—Appeal.—A denial of a constitutional right is of itself reversible error.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 54.]

20. Indictment and Information (§ 133 (10)*)—Charging Two Offenses in One Count—Remedy.—The objection to charging more than one offense in the same count of an indictment cannot, as a rule, be raised by demurrer or by motion in arrest of judgment, but the proper method is by motion to quash, though the commonwealth might be required to elect on which it will proceed.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 446, 453; 8 Va.-W. Va. Enc. Dig. 30.]

21. Indictment and Information (§ 130*)—Charging Two Offenses in One Count.—There is no reason or principle, why even two felonies of the same nature and punishable in the same manner may not be charged in different counts of the same indictment.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 441.]

22. Indictment and Information (§ 132 (8)*)—Election Between Counts.—Inasmuch as Acts 1916, c. 146, § 7, permits more than one offense against the prohibition law to be charged in a single count, defendants have no absolute right to demand an election of the offense to be prosecuted, but it is within the discretion of the trial court whether an election will be required.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 446; 8 Va.-W. Va. Enc. Dig. 30.]

23. Criminal Law (§ 1032 (7)*)—Trial—Election of Counts.—If, by reason of charging several distinct offenses widely separated by time, place, and circumstances, the defendant will be seriously embarrassed in making his defense, whether the offense be felony or misdemeanor, the election should be compelled.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 445; 8 Va.-W. Va. Enc. Dig. 30.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

24. Criminal Law (§ 1032 (5)*)—Indictment—Appeal.—Though an indictment under Acts 1916, c. 146, § 7, does not sufficiently charge some of the offenses under §§ 3 and 4 of the act, and the defendants on demand could have required a more specific statement of the cause and nature of their offense, their failure to demand such statement precludes a reversal on the ground that the indictment was insufficient.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 554; 7 Va.-W. Va. Enc. Dig. 403.]

25. Intoxicating Liquors (§ 226*)—Illegal Sale—Evidence—Admissibility.—In a prosecution for violation of the prohibition law, where two witnesses had testified to buying liquor from a third person, testimony of such third person that the witnesses had broken into his house and stolen the liquor was properly excluded.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 36.]

26. Intoxicating Liquors (§ 236 (5)*)—Illegal Sale—Instructions.—In a prosecution for violation of the prohibition law, an instruction that, if the defendants had in their possession at any time within the time laid in the indictment certain quantities of liquor, this would be prima facie evidence that they had it for sale, though acquired prior to November 1, 1916, was free from objection.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

27. Constitutional Law (§ 55*)—Powers of Legislature—Rules of Evidence.—Rules of evidence in criminal prosecutions may be established by the Legislature.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 212.]

28. Intoxicating Liquors (§ 239 (10)*)—Illegal Sale—Instructions.—In prosecution for alleged illegal sale of liquors, where all the testimony concerned a sale, an instruction that the defendants were guilty if they gave away the liquors, though it might have been erroneous had the evidence concerned a giving away, was not misleading.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 15; 7 Va.-W. Va. Enc. Dig. 727.]

29. Criminal Law (§ 829 (4)*)—Instructions—Requests Covered.—Where the court instructed that, if the defendants purchased liquor prior to November 1, 1916, and had it for their own use, and not for sale, and did not sell it, they should be acquitted, it was not error to refuse the requested instruction that, if defendants had the liquor prior to such date, their possession thereof created no presumption against them.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

30. Criminal Law (§ 829 (4)*)—Instructions—Requests Covered.—Where the court instructed that, notwithstanding possession of more

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than one gallon of liquor is prima facie evidence of guilt, if the liquor was purchased before November 1, 1916, and stored by defendants for their own use, they should be acquitted, it was not error to refuse the instruction that, if the liquor was so purchased and stored, the prima facie evidence of possession is overcome, and the state must prove by clear, distinct, and reliable evidence the illegal purpose.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

31. Intoxicating Liquors (§ 140*)—Possession of Liquor—When Unlawful.—Under Acts 1916, c. 146, § 3, providing that after November 1, 1916, it shall be unlawful for any person to manufacture, transport, sell, keep, or store for sale more than a gallon of intoxicating liquor, the mere keeping of liquor is not illegal, but to constitute the offense it must be kept for sale.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 15.]

Error to Corporation Court of Roanoke.

John Pine and Sarah Scott were convicted of a violation of the prohibition act, and they bring error. Affirmed.

Hoge & Darnall, Lawson Worrell, and A. J. Oliver, all of Roanoke, for plaintiffs in error.

The Attorney General, for the Commonwealth.

HURT et al. v. HURT.

Sept. 20, 1917.

[93 S. E. 672.]

1. Wills (§ 565 (1*))—Construction—"Personal Estate."—The words "personal estate," in a will, technically cover the intangible as well as tangible property.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Personal Estate. For other cases, see 13 Va.-W. Va. Enc. Dig. 797.]

2. Wills (§ 457*)—Construction—Technical Words.—Technical words used in a will are presumed to be used technically, and legal words in their definite legal sense, unless the contrary appears on the instrument's face.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 795.]

3. Wills (§ 440*)—Construction—Intention of Testator—Language of Instrument.—The intention of the testator, as found in the language of the instrument, in the meaning of the words used, when properly interpreted, rather than his presumed or supposed intention, must control, if not inconsistent with established rules of law.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 780, 792.]

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